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TEAMSTERS LOCAL 853

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

TEAMSTERS LOCAL 853,

Petitioner,

v.

SFO AIRPORTER, INC. d/b/a COMPASS
TRANSPORTATION,

Respondent.

Case No.

**PETITION TO VACATE ARBITRATOR'S
AWARD**

NOW COMES TEAMSTERS LOCAL 853 and petitions the Court as follows:

JURISDICTION

1. This Court has jurisdiction pursuant to the Labor Management Relations Act, Section 301, 29 U.S.C. § 185(a) ("Section 301").

PARTIES

2. Petitioner Teamsters Local 853 (the "Union") is and at all times relevant and material herein has been a labor organization and the exclusive collective bargaining representative of the drivers employed by Respondent SFO Airporter, Inc. d/b/a Compass Transportation in the San Francisco Bay Area including those dispatched out of its facilities located in South San Francisco, California and San Jose, California.

3. Respondent SFO Airporter, Inc. d/b/a Compass Transportation (the "Employer") is and at all times relevant and material herein has been engaged in the business of providing

1 transportation, including shuttle bus transportation for employers in and around Silicon Valley. The
 2 Employer's headquarters is located in South San Francisco, California. The Employer is and at all
 3 times relevant and material herein has been an employer in an industry affecting commerce within the
 4 meaning of Section 301.

5 INTRADISTRICT ASSIGNMENT

6 4. Pursuant to Civil Local Rule 3-2(d), this case is appropriate for assignment to the San
 7 Francisco or the Oakland Division.

8 FACTS

9 5. The Union and the Employer are parties to a collective bargaining agreement ("CBA")
 10 covering the Employer's drivers in the Bay Area, working out of South San Francisco and San Jose,
 11 California. The applicable CBA had a term from November 23, 2015 through October 23, 2018. A
 12 true and correct copy of the CBA is attached as **Exhibit A** and incorporated herein by reference. The
 13 CBA contains a grievance-arbitration procedure for final resolution of disputes arising under the
 14 CBA at Article 18. The CBA provides that "the arbitrator shall have no authority to detract from,
 15 modify, add to, delete, alter, amend, change or subtract from this Agreement." (Exh. A at p. 20.)

16 6. Employees covered by the CBA are drivers that drive shuttles for the clients of the
 17 Employer. The CBA protects employees from termination in the event that a client removes the
 18 driver from an account.

19 7. The CBA states, in relevant part,

20 Under direction from any client or customer, an employee may be
 21 removed from service of that client or customer if it is deemed the
 22 employee is not performing to the client or customer's satisfaction. The
 23 employee, however, may bid to work for another client or customer,
 unless the employee engaged in misconduct or actions warranting
 discharge from the employer. If no position are available with another
client or customer, the employee will be deemed laid off.

24 (Exh. A at p. 17 (emphasis added).)

25 8. On November 2, 2018, a client requested that the Employer remove an employee,
 26 Michael Henderson (the "Grievant") from an account based on an anonymous complaint from a
 27 passenger. On November 13, 2018, the Employer terminated the Grievant. On November 28, 2018,
 28 the Union filed a timely grievance protesting the termination.

1 9. The parties agreed to submit the grievance to arbitration before Arbitrator David Hart
2 pursuant to the grievance-arbitration procedure contained in the CBA.

3 10. On July 15, 2019, Arbitrator Hart issued his Opinion and Award denying the Union's
4 grievance. Despite the clear mandatory contract language and the restriction on an arbitrator against
5 detracting from or modifying the contract, the Arbitrator denied the Union's grievance, upheld the
6 Company's termination by finding that:

7 While just cause is the Employer's responsibility to satisfy in a discharge
8 case, retaining one's basic qualification(s) for continued employment is
9 solely the responsibility of the Employee. . . Disqualification by an
10 Employee can result from many things, including lack of physical ability
11 to do the job, loss of licensure, or rejection by customers and/or clients.
12 For example, a Collective Bargaining Agreement covers a group of
13 Employees that are employed under only one contract, the customer's
14 designation of a particular Employee ineligible for future service is
15 traditionally known as the "Persona Non Grata" doctrine. In such cases,
16 the loss of the Employer's ability to assign work to that employee fails to
17 maintain his or her qualification for purpose of continued service, neither
18 due process nor just cause can prevent that employee from loss of
19 employment. It is the Employee's sole obligation to maintain his or her
20 qualified status in such a fashion as to continue to be "qualified" for
21 continued employment. To find otherwise would jeopardize the job
22 security of all of the members covered by any Collective Bargaining
23 Agreement, a result which neither of the parties to this Arbitration
24 intended. . . . **The Company did not need to meet the standard for
25 termination of the Grievant's employment because of misconduct,
26 even through his alleged and partially admitted behavior was a
27 violation of the Driver Manifesto and multiple provisions of the
28 parties' Agreement; rather, the Company properly terminated his
employment due to his persona non grata disqualification.** Nothing in
the contract was triggered which required the employer to "find" work
thereafter for the Grievant.

A true and correct copy of Arbitrator Hart's Opinion and Award is attached as **Exhibit B** and
incorporated herein by reference. (See Exh. B at pp. 11-12 (emphasis added).)

LEGAL CLAIM

11. By concluding that the Company need not meet the standard for termination of the
Grievant because he was removed from an account by a customer and that the Company could sever
the Grievant's employment because he was removed from a customer account, the Arbitrator
modified the CBA and eliminated terms of the agreement. The CBA explicitly states that in the event
an employee is removed from a customer account that employee may bid to work for another client
or customer or, if no positions are available, *will* be deemed laid off. The CBA protects an

1 employee's seniority upon removal from an account by a customer. The Arbitrator did not interpret
2 the CBA language; he ignored it and effectively deleted it. He replaced it with his own brand of
3 industrial justice and the Opinion and Award did not draw its essence from the CBA. The Arbitrator's
4 decision that the Employer could terminate the Grievant based solely on his "*persona non grata*"
5 removal from an account and that just cause did not apply exceeded his authority and modified the
6 parties' CBA.

7 WHEREFORE, Petitioner prays:

- 8 1. That Arbitrator Hart's Opinion and Award be vacated;
- 9 2. That the grievance be remanded to the parties through resolution through the CBA's
10 grievance-arbitration procedure in a manner consistent with the Opinion of this Court;
- 11 3. That Petitioner be awarded costs incurred herein; and
- 12 4. For any such other and further relief as the Court may deem proper.

13
14 Dated: October 21, 2019

BEESON, TAYER & BODINE, APC

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16 By: /s/ Susan K. Garea
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17 Attorneys for Petitioner TEAMSTERS LOCAL 853